

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

JAN - 4 2006

JERRY V. BOLIN,

Petitioner

v.

//

CIVIL ACTION NO. 1:05CV104
(Judge Keeley)

WILLIAM F. FOX, Warden

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On July 15, 2005, pro se petitioner Jerry V. Bolin ("Bolin") filed a petition pursuant to 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. The Court referred this matter to United States Magistrate Judge James E. Seibert for initial screening and a report and recommendation pursuant to Standing Order of Reference for Prisoner Litigation Filed Pursuant to 28 U.S.C. §2254 (Standing Order No. 5) and in accordance with Local Rule of Prisoner Litigation 83.09.

On July 26, 2005, the magistrate judge ordered the respondent to file a response to Bolin's §2254 petition. On August 25, 2005, the respondent filed a "Motion to Dismiss Petition as Untimely filed." Because Bolin was proceeding pro se, on September 23, 2005, Magistrate Judge Seibert issued a Roseboro notice advising Bolin of his right to respond to the respondent's motion to dismiss within thirty (30) days. However, Bolin filed no response to the motion to dismiss.

ORDER ADOPTING REPORT AND RECOMMENDATION

On December 12, 2005, Magistrate Judge Seibert issued an Opinion and Report and Recommendation, recommending that Bolin's \$2254 motion be denied and the case be dismissed with prejudice. The magistrate judge determined that Bolin's \$2254 motion filed on July 15, 2005 was untimely. The Report and Recommendation also specifically warned that Bolin's failure to object to the magistrate judge's recommendation would result in the waiver of his appellate rights on this issue. Nevertheless, Bolin failed to file any objections to the magistrate judge's report and Recommendation.¹

Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety, **GRANTS** the respondent's motion to dismiss, **DENIES** all of Bolin's pending motions, and **ORDERS** Bolin's case **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

The Clerk is directed to mail a copy of this Order to the pro se petitioner via certified mail, return receipt requested and to counsel of record.

Dated: January 4, 2006.


IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ Bolin's failure to object to the Report and Recommendation not only waives his appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).